

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN John Edward Robinson, Labour Inspector (Applicant)
AND Martin John Hine (Respondent)
REPRESENTATIVES John Robinson for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 24 October 2006
DATE OF DETERMINATION 25 October 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Labour Inspector John Robinson seeks to recover two days sick leave entitlement, totalling \$250 gross, for Kim Brill an employee of Martin Hine. Mr Robinson also seeks an award of interest on that sum, a penalty for failure to pay outstanding sick leave entitlement and failure to provide a written employment agreement and recovery of costs.

[2] Mr Hine has not filed a statement in reply.

[3] The investigation meeting was scheduled to commence at 10am today. At 10.15am neither Mr Hine nor a representative were present at the Authority. An Authority support officer telephoned Mr Hine's mobile telephone and left a message advising that an investigation meeting was scheduled to commence today. The support officer then telephoned Mr Hine's offices and was advised that he is in the High Court today. Mr Hine signed for the courier delivery of the statement of problem on 19 August 2006 and was personally served with a notice of the investigation meeting on 4 October 2006. He has not sought to adjourn today's investigation meeting. Having satisfied myself that the service requirements of the Act had been met and that reasonable steps had been made to contact Mr Hine to ascertain his whereabouts the investigation meeting commenced at 10.30am.

Sick leave entitlement

[4] The applicant Labour Inspector, John Robinson, attended today's scheduled investigation meeting and gave evidence which included his investigation report into this matter as attached to the statement of problem.

[5] Ms Brill commenced employment as a legal secretary with Mr Hine at his Whangaparaoa legal practise in February 2005. She did not have a written employment agreement. Ms Brill took two days sick leave on 22 and 23 February 2006. On receiving notification of this leave Mr Hine requested that Ms Brill submit a medical certificate to substantiate the sick leave entitlement. Ms Brill obtained and submitted the medical certificate. Ms Brill did not receive the two days sick leave entitlement and referred the matter to the Labour Inspectorate who have investigated and pursued payment on her behalf. She is currently on parental leave.

[6] In a telephone conversation on Thursday 27 July 2006 Mr Robinson said Mr Hine acknowledged he owed Ms Brill sick pay and that he had sent a cheque for the outstanding sum to the Employment Court. Mr Robinson contacted the Employment Court and was advised no such cheque had been received. Mr Robinson subsequently lodged this application in the Employment Relations Authority.

[7] Mr Robinson's evidence has not been challenged and I accept it in its entirety. **I am satisfied that Mr Hine owes Ms Brill two days sick leave entitlement totalling \$250 (gross). He is required to pay this sum to the Labour Inspectorate for the benefit of Kim Brill.**

Interest

[8] Paid sick leave is a statutory minimum entitlement. Mr Hine has acknowledged on 27 July 2006 that he owes this payment to Ms Brill and without explanation has continued to default on this payment. **It is appropriate that interest be calculated on this sum from 27 July 2006 until date of payment at the rate of 7%. This order is made pursuant to section 84(2) Holidays Act 2003.**

Penalty

[9] In the statement of problem a penalty was sought pursuant to section 75(2)(d) Holidays Act 2003 for failure to pay the employee's sick leave entitlement. Mr Hine has acknowledged to Mr Robinson that Ms Brill's sick leave entitlement is due and owing. Mr Hine has had a fair opportunity to provide an explanation for his failure to pay Ms Brill's sick leave entitlement which he has not taken up. In the circumstances it is open to me to conclude that Mr Hine's continued failure to pay Ms Brill her sick leave entitlement is deliberate. **It is appropriate that a penalty be imposed of \$250 to be paid to the Crown.**

[10] A further penalty was sought today for failure to provide a written employment agreement pursuant to section 65 Employment Relations Act 2000. This claim was not made in the statement of problem. Given Mr Hine has not been put on notice of this claim I decline to award a penalty. However, this should not be seen as an indulgence of Mr Hine's clear failure to comply with his statutory obligation as an employer to provide Ms Brill with a written employment agreement.

Costs

[11] **The Labour Inspector is entitled to recover the \$70 filing fee incurred in lodging this application from Mr Hine and I so order.**

[12] At the direction of the Authority the Labour Inspector was required to arrange for the notice of investigation meeting to be personally served on Mr Hine. This direction was made because Mr Hine failed to file a statement of reply and advised the Authority that he would not make himself available to attend a telephone conference call to discuss timetabling an investigation meeting.

[13] It is reasonable that the Labour Inspectorate is able recover the costs incurred in engaging a service agent in full. **Mr Hine is ordered to pay the Labour Inspectorate the sum of \$108.17.**